

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FELIPE PEREZ PEREZ,

Plaintiff,

v.

KENNETH T. CUCCINELLI, Senior
Official Performing the Duties of the Director,
United States Citizenship and Immigration
Services,

Defendant.

Case No. 3:16-CV-00748

**DEFENDANT’S PARTIALLY OPPOSED MOTION FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFF’S MOTION FOR ATTORNEYS’ FEES AND EXPENSES
UNDER THE EQUAL ACCESS TO JUDGMENT ACT**

Defendant moves for an extension of time to respond to Plaintiff’s Motion for Attorneys’ Fees and Expenses Under the Equal Access to Judgment Act for a period of 28 days, from the current deadline of August 21, 2020, to September 18, 2020. Pursuant to LCvR 7.1(b), the undersigned conferred with opposing counsel, Mr. Brad Banias, via e-mail on August 10, 2020, requesting his agreement to an extension for a period of 30-45 days. Mr. Banias responded on August 11, 2020, agreeing to a 14-day extension only. Accordingly, Defendant now respectfully seeks an unopposed extension of 14 days and an opposed extension of an additional 14 days. In support of this partially opposed motion for extension of time, Defendant shows as follows:

1. In October 2016, Plaintiff Felipe Perez Perez filed a Complaint seeking review of Defendant United States Citizenship and Immigration Services’ (“USCIS”) denial of his petition for special immigrant juvenile (“SIJ”) status under the Administrative Procedure Act (“APA”). ECF No. 1.

2. In January 2017, USCIS filed its Answer. ECF No. 10.
3. Subsequently, Plaintiff moved to set aside USCIS's decision denying his SIJ petition and USCIS moved for judgment on the record. ECF Nos. 14 & 16, respectively.
4. This Court granted USCIS's motion for judgment on the record. ECF No. 21.
5. Plaintiff appealed this Court's decision to the Fourth Circuit Court of Appeals. *Perez v. Cuccinelli*, No. 18-1330 (4th Cir.).
6. After oral argument, a panel of the Circuit Court affirmed this Court's decision.
7. After rehearing *en banc*, Plaintiff finally obtained a favorable decision, with six judges dissenting. *Perez v. Cuccinelli*, 949 F.3d 865 (4th Cir. 2020).
8. Now Plaintiff seeks to recover attorneys' fees under the Equal Justice to Access Act ("EAJA"), 28 U.S.C. § 2412.
9. USCIS anticipates filing an opposition to the fee request given that this Court, the panel, and six members of the *en banc* Court believed the government's position was substantially justified.
10. On the same day he filed his EAJA motion, Plaintiff moved to enforce this Court's April 29, 2020, order, ECF No. 32, remanding Plaintiff's SIJ application to USCIS for reconsideration. ECF No. 34. Plaintiff asserts USCIS failed to adjudicate his SIJ petition.
11. Plaintiff's SIJ petition has been adjudicated and Plaintiff's counsel has been notified of the decision. Ex. A. On August 19, 2020, the undersigned asked Plaintiff's counsel, via e-mail, whether Plaintiff intended to withdraw the motion to enforce as moot. At the time of this filing, Plaintiff's counsel has not responded.
12. Under LCvR 7.1(e), USCIS's response to Plaintiff's EAJA motion is currently due on or before August 21, 2020. Defendant respectfully requests an extension of time to file its

response to Plaintiff's EAJA motion for a period of 28 days, through and including September 18, 2020, to allow adequate time to gather information and research the assertions in the EAJA motion, memorandum, and exhibits.

13. Plaintiff will not be prejudiced by granting Defendant this 28-day extension.

Accordingly, Defendant respectfully requests that the Court enter an order granting this motion to extend his time to respond to Plaintiff's Motion for Attorneys' Fees and Expenses Under the Equal Access to Judgment Act for a period of 28 days, from the current deadline of August 21, 2020, to September 18, 2020.

This the 19th day of August, 2020.

Respectfully submitted,

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